

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-4269-GAF (JEM)

Date October 28, 2014

Title Jason Saunders v. Alphonso A. Swaby, et al.

Present: The Honorable John E. McDermott, United States Magistrate Judge

S. Anthony

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

Proceedings: **(IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL
FOR FAILURE TO PROSECUTE**

On February 25, 2014, the Court issued a Report and Recommendation (“R&R”), recommending that the District Court issue an order granting in part and denying in part Defendants’ motion to dismiss Plaintiff’s Second Amended Complaint (“SAC”), and dismissing the SAC with leave to amend to the extent set forth in the R&R.

On May 12, 2014, the District Judge issued an Order Accepting Findings and Recommendations of United States Magistrate Judge (“May 12 Order”), granting in part and denying in part Defendants’ motion to dismiss the SAC and granting Plaintiff leave to file a Third Amended Complaint (“TAC”) consistent with the R&R, as modified by the May 12 Order, within thirty days.

On July 25, 2014, after Plaintiff failed to file the TAC by the June 11, 2014, deadline set forth in the May 12 Order, the Court issued an Order to Show Cause (“July 2014 OSC”) directing Plaintiff to show cause, no later than August 22, 2014, why this action should not be dismissed for failure to prosecute and/or failure to comply with a Court order. The July 2014 OSC further advised Plaintiff that filing of a TAC consistent with the R&R, as modified by the May 12 Order, shall be a satisfactory response to the July 2014 OSC.

On August 11, 2014, Plaintiff filed a Response to Court’s Order to Show Cause (“Response”). In the Response, Plaintiff explained that he was released from custody on May 27, 2014, and that he filed a request for extension of time with the Court one day prior to his release. According to Plaintiff, when he failed to receive a response by the Court to the request for extension of time by June 23, 2014, Plaintiff “filed a pleading with the court inquiring into the status of the case[.]” (Response at 2.)

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On August 13, 2014, the Court issued an Order directing Plaintiff to file the TAC no later than the August 22, 2014, extended deadline for filing the TAC set forth in the Court's July 2014 OSC. The Court noted that this represents an extension of 72 days from the initial filing deadline of June 11, 2014, set forth in the May 12 Order. Moreover, although Plaintiff claimed that he filed a request for extension of time and a request for status, the record in this case reflects no such filings by Plaintiff. The Court warned Plaintiff that no further extensions of this deadline would be granted absent extraordinary circumstances. The Court further admonished Plaintiff that failure to file the TAC by the above-referenced deadline could result in a recommendation that this action be dismissed for failure to prosecute and/or failure to comply with a court order.

On August 25, 2014, Plaintiff filed a document titled "Final Request for Extension of Time to Amend Pleadings" ("Motion"). Plaintiff's Motion repeated the allegations set forth in Plaintiff's Response as grounds for seeking an extension of time to file the TAC. (Motion at 2 (explaining that Plaintiff was released from custody on May 27, 2014, and that he filed a request for extension of time with the Court one day prior to his release; that when he failed to receive a response by the Court to the request for extension of time by June 23, 2014, Plaintiff "filed a pleading with the court inquiring into the status of the case"; and that the Court "never responded to either" motions).) Plaintiff stated that the August 22, 2014, deadline for filing the TAC set forth in the Court's Order of August 13, 2014, was nine days after the Court's Order was filed, and that Plaintiff was unable to amend his pleadings during this time due to inter alia "medical and psychiatric concerns". (Motion at 2.) Plaintiff requested an additional 30 days to file the TAC.

On September 4, 2014, the Court issued an order granting Plaintiff's Motion and extending the deadline to file the TAC to no later than September 22, 2014. The Court's Order of September 4, 2014, warned Plaintiff that no further extensions will be granted.

On September 24, 2014, Plaintiff submitted a proposed TAC to the Court for filing. (Docket No. 250.)

On October 14, 2014, the Court rejected the proposed TAC received September 24, 2014, for failure to comply with the May 12 Order. (Docket No. 250.)

The September 22, 2014, deadline to file the TAC has passed, and Plaintiff has failed to file a TAC consistent with the R&R, as modified by the May 12 Order.

In light of the foregoing, Plaintiff is **ORDERED TO SHOW CAUSE** why this case should not be dismissed for failure to prosecute and/or failure to comply with a Court

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order. Plaintiff shall file a written response to this Order to Show Cause no later than **November 12, 2014**.¹ Plaintiff's failure to respond in writing to the Order to Show Cause by the deadline may result in a recommendation that this action be dismissed for failure to prosecute and/or failure to comply with a court order.

Filing of a TAC consistent with the R&R, as modified by the May 12 Order, shall be a satisfactory response to the Order to Show Cause.

No extensions of this deadline will be granted absent extraordinary circumstances.

IT IS SO ORDERED.

cc: Parties

Initials of Deputy Clerk

: _____
sa _____

¹ Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, oral argument on this Order to Show Cause will not be heard unless ordered by the Court. Upon the filing of a Response, the Order to Show Cause will stand submitted.